

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

<b>CORNELIUS TUCKER, JR.,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>1:11CV132</b>
	)	
<b>SHATZMAN,</b>	)	
	)	
<b>Respondent.</b>	)	

**ORDER AND RECOMMENDATION**  
**OF UNITED STATES MAGISTRATE JUDGE**

Petitioner, a prisoner of the State of North Carolina, has submitted a petition under 28 U.S.C. § 2254 for writ of habeas corpus by a person in state custody, together with an application to proceed *in forma pauperis*. For the following reasons, the petition cannot be further processed.

1. Petitioner has failed to indicate that state court remedies have been exhausted. [28 U.S.C. § 2254(b).] In fact, he admits in his petition that he has filed several documents seeking to have his conviction and sentence reviewed, but has not yet received a response or decision. This is not surprising given that, according to his petition, he was convicted on February 8, 2011 and mailed his petition on February 21, 2011. This is not nearly enough time for him to have properly exhausted his claims through multiple levels of court review. In order to exhaust his claims, Petitioner must submit properly filed documents to the North Carolina courts, have a decision rendered, submit that decision to review before the highest possible court that can review the decision, and have that court render a decision.

2. An insufficient number of copies was furnished. Petitioner must submit the original and two copies.

Because of these pleading failures, this particular petition should be filed and then dismissed, without prejudice to Petitioner filing a new petition on the proper habeas corpus forms with the \$5.00 filing fee, or a completed application to proceed *in forma pauperis*, and otherwise correcting the defects noted. The Court has no authority to toll the statute of limitation, therefore it continues to run, and Petitioner must act quickly if he wishes to pursue this petition. *See Spencer v. Sutton*, 239 F.3d 626 (4th Cir. 2001). To further aid Petitioner, the Clerk is instructed to send Petitioner a new application to proceed *in forma pauperis*, new § 2254 forms, and instructions for filing a § 2254 petition, which Petitioner should follow.

*In forma pauperis* status will be granted for the sole purpose of entering this Order and Recommendation.

**IT IS THEREFORE ORDERED** that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation. The Clerk is instructed to send Petitioner § 2254 forms, instructions, and a current application to proceed *in forma pauperis*.

**IT IS RECOMMENDED** that this action be filed, but then dismissed *sua sponte* without prejudice to Petitioner filing a new petition which corrects the defects of the current petition after he has exhausted his state court remedies.

/s/ P. Trevor Sharp  
United States Magistrate Judge

Date: February 25, 2011